



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Patent Application of

VELKE et al.

Atty. Ref.: 3696-61

Serial No. 10/712,261

TC/A.U.: 3671

Filed: November 14, 2003

Examiner: A KOVACS

For: WALK-BEHIND LAWN MOWER

* * * * *

August 9, 2007

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Applicant hereby appeals to the Board of Patent Appeals and Interferences from the last decision of the Examiner.

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(I) **REAL PARTY IN INTEREST**

The real party in interest is Wright Manufacturing, Inc., a Maryland corporation of the country of the United States.

(II) RELATED APPEALS AND INTERFERENCES

The appellant, the undersigned, and the assignee are not aware of any related appeals, interferences, or judicial proceedings (past or present), which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(III) STATUS OF CLAIMS

Claims 1-26 have been canceled. Claims 27-30 are pending and have been rejected (claims 27-30 are on appeal). No claims have been substantively allowed.

(IV) STATUS OF AMENDMENTS

The Amendment After Final filed January 8, 2007 has been entered. However, no amendment has been filed since the reopening of prosecution via the Office Action dated May 15, 2007.

(V) SUMMARY OF CLAIMED SUBJECT MATTER

This section is for purposes of example only and without limitation.

Claim 27 relates to a walk-behind lawn mower (e.g., Figs. 1-2; ¶0004) including an engine (e.g., 7 in Figs. 1-2; ¶0031) for driving at least one cutting blade (e.g., ¶0005); and a sulky (e.g., 1 in Figs. 1-3) attached to the mower. The sulky comprises a substantially vertical pivot axis structure which is aligned substantially vertical relative to the ground during normal sulky operation when the sulky trails behind the mower (e.g., 79 in Figs. 1-3; ¶0031), wherein a foot platform (e.g., 73 in Fig. 1; ¶0033) of the sulky pivots relative to a front arm (e.g., 75 in Figs. 1-3; ¶0033) of the sulky about a pivot axis defined by the substantially vertical pivot axis structure (e.g., 79 in Figs. 1-3; ¶0031). The sulky further includes a latch assembly (e.g., 65 in Figs. 2-3) for coupling a protruding member (e.g., 87 in Fig. 3; ¶0036) of the sulky to a spring-biased latch (e.g., 81 in Fig. 3; ¶¶ 0036, 0039) of the latch assembly when the sulky is folded up from a deployed position to a stowed position so that the latch assembly of the mower can hold the folded-up sulky in the stowed position (e.g., see Fig. 3).

In certain example embodiments, the protruding member (e.g., 87 in Fig. 3; ¶0036) extends outwardly from a body of the sulky so that at least a distal end of the protruding member defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of the sulky (e.g., see Figs. 3-4; ¶0037); and wherein the protruding member of the sulky is directly coupled to the spring-biased latch when the sulky is folded up in a stowed position (e.g., see Fig. 3), but the protruding member of the sulky is not directly coupled to the spring-biased latch when the sulky is in a deployed position during normal sulky operation when the sulky is trailing behind the mower (e.g., see Fig. 1).

(VI) GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 27-30 are unpatentable under 35 U.S.C. Section 103(a) over Velke (US 5,810,371) in view of Klingier (US 6,622,354) and/or Brainerd (US 5,878,834) and/or Gray (US 5,966,911) and/or Dunn (US 4,156,339).

(VII) ARGUMENT

It is axiomatic that in order for a reference to anticipate a claim, it must disclose, teach or suggest each and every feature recited in the claim. See, e.g., Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983). The USPTO has the burden in this respect.

Moreover, the USPTO has the burden under 35 U.S.C. Section 103 of establishing a *prima facie* case of obviousness. *In re Piasecki*, 745, F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984). It can satisfy this burden only by showing that some objective teaching in the prior art, or that knowledge generally available to one of ordinary skill in the art, would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Before the USPTO may combine the disclosures of the references in order to establish a *prima facie* case of obviousness, there must be some suggestion for doing so. *In re Jones*, 958 F.2d 347 (Fed. Cir. 1992). Even assuming, *arguendo*, that a given combination of references is proper, the combination of references must in any event disclose the features of the claimed invention in order to render it obvious.

Furthermore, with respect to the inherency rejections, the law is clear that for something to be “inherent” in a reference, it must “necessarily” be present. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). The fact that a certain result or characteristic “may” occur or be present in the prior art is not sufficient to establish the inherence of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). The Board of Appeals has made clear

that “[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

A. Section 103(a) Rejections Based On Velke, Klingier, Brainerd, Gray and Dunn

Claim 27

Claim 27 stands rejected under 35 U.S.C. Section 103(a) over Velke (US 5,810,371) in view of Klingier (US 6,622,354) and/or Brainerd (US 5,878,834) and/or Gray (US 5,966,911) and/or Dunn (US 4,156,339). This Section 102(b) rejection should be reversed for at least the following reasons.

Claim 27 requires “a latch assembly for coupling a protruding member of the sulky to a spring-biased latch of the latch assembly when the sulky is folded up from a deployed position to a stowed position so that the latch assembly of the mower can hold the folded-up sulky in the stowed position; wherein the protruding member extends outwardly from a body of the sulky so that at least a distal end of the protruding member defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of the sulky; and wherein the protruding member of the sulky is directly coupled to the spring-biased latch when the sulky is folded up in a stowed position, but the protruding member of the sulky is not directly coupled to the spring-biased latch when the sulky is in a deployed position during normal sulky operation when the sulky is trailing behind the mower.”

For purposes of example and without limitation, Figs. 2-3 illustrate that the protruding member (e.g., 87) of the sulky is directly coupled to the spring-biased latch (e.g., 81) when the sulky is folded up in a stowed position, and Fig. 1 illustrates that the protruding member (e.g., 87) of the sulky is not directly coupled to the spring-biased latch (e.g., 81) when the sulky is in a deployed position during normal sulky operation when the sulky is trailing behind the mower. Example non-limiting latch 81 is “spring-biased” because it is biased by at least one spring (e.g., see spring 83; and paragraph [0034] of the instant specification). The protruding member (e.g., 87 in Fig. 3; ¶0036) extends outwardly from a body of the sulky so that at least a distal end of the protruding member defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of the sulky (e.g., see Figs. 3-4; ¶0037).

Velke (US 5,810,371) fails to disclose or suggest both (a) the “*spring-biased latch*” and (b) the protruding member coupled to the latch which defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of the sulky, as called for by claim 27. The mere presence of a chain link 63 dangling from the dashboard area of the mower in Fig. 12 of Velke cannot possibly be considered a “*spring-biased latch*” as required by claim 27. Moreover, there is no protruding member in Velke which is both coupled to the latch and defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of the sulky, as called for by claim 27.

Citation to Klingier, Brainerd, Gray and Dunn cannot cure the aforesaid flaws in Velke. Even the alleged combination (which would be incorrect in any event) fails to disclose or suggest the invention of claim 27. There is nothing in any of the cited references which discloses or suggests a protruding member which is both coupled to the

latch and defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of a sulky as called for by claim 27. The rock climbing carabiners of Brainerd and Klingier are entirely unrelated to both Velke and the invention of claim 27 in these respects. The horse reins of Gray are also entirely unrelated to both Velke and the invention of claim 27 in these respects. Dunn is also flawed in these respect. The claimed features are simply not set forth in the cited art, and hindsight is not permissible.

Claim 28

Claim 28 requires that “*the latch assembly is located under a dashboard of the mower.*” Velke fails to disclose or suggest the claimed latch assembly, and also fails to disclose or suggest a latch assembly under a dashboard as required by claim 28. Citation to the other references cannot cure the flaws of Velke in this respect. The rejection of claim 28 should be reversed.

Claim 29

Claim 29 requires that “*a leading portion of the sulky is adapted to hit the buttress plate when the sulky is moved into the stowed position with excessive force.*” Velke fails to disclose or suggest this feature of claim 29. In Velke, no leading portion of the sulky is adapted to hit plate 29. Citation to the other references cannot cure the flaws of Velke in this respect. This rejection should be reversed.

CONCLUSION

In conclusion it is believed that the application is in clear condition for allowance; therefore, early reversal of the Final Rejection and passage of the subject application to issue are earnestly solicited.

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Respectfully submitted,

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(VIII) CLAIMS APPENDIX

1-26. (Canceled)

27. A walk-behind lawn mower comprising:

an engine for driving at least one cutting blade;

a sulky attached to the mower, wherein the sulky comprises a substantially vertical pivot axis structure which is aligned substantially vertical relative to the ground during normal sulky operation when the sulky trails behind the mower, wherein a foot platform of the sulky pivots relative to a front arm of the sulky about a pivot axis defined by the substantially vertical pivot axis structure;

a latch assembly for coupling a protruding member of the sulky to a spring-biased latch of the latch assembly when the sulky is folded up from a deployed position to a stowed position so that the latch assembly of the mower can hold the folded-up sulky in the stowed position;

wherein the protruding member extends outwardly from a body of the sulky so that at least a distal end of the protruding member defines an angle θ of from about 30 to 70 degrees with the vertical pivot axis of the sulky; and

wherein the protruding member of the sulky is directly coupled to the spring-biased latch when the sulky is folded up in a stowed position, but the protruding member of the sulky is not directly coupled to the spring-biased latch when the sulky is in a deployed position during normal sulky operation when the sulky is trailing behind the mower.

28. The mower of claim 27, wherein the latch assembly is located under a dashboard of the mower.

29. The mower of claim 27, further comprising a buttress plate located laterally forward of the latch, so that a leading portion of the sulky is adapted to hit the buttress plate when the sulky is moved into the stowed position with excessive force.

30. The mower of claim 27, wherein the protruding member of the sulky extends outwardly from the vertical pivot axis of the sulky.

(IX) EVIDENCE APPENDIX

None

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(X) **RELATED PROCEEDINGS APPENDIX**

None